Nos. 80-289 and 80-692

IN THE

Supreme Court of the United States

October Term, 1980

UNITED MINE WORKERS OF AMERICA, *et al.*,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, *et al.*

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

AMAX COAL COMPANY
A DIVISION OF AMAX, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF OF THE BITUMINOUS COAL OPERATORS' ASSOCIATION, INC., AMICUS CURIAE

Of Counsel:

MORGAN, LEWIS & BOCKIUS
1800 M Street, N.W.
Washington, D.C. 20036

CHARLES P. O'CONNOR
HARRY A. RISSETTO
MARGERY SINDER FRIEDMAN
1800 M Street, N.W.
Washington, D.C. 20036

Counsel for Amicus Curiae Bituminous Coal Operators' Association, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on March 5, 1981 this *amicus curiae* brief was served by first class mail, postage prepaid, on the following:

Solicitor General of the United States
Department of Justice
Washington, D.C. 20530

Harrison Combs
A. Randall Vehar
900 Fifteenth Street, N.W.
Washington, D.C. 20005

J. Craig Kuhn
Melvin P. Stein
James C. Kuhn, III
Kuhn, Engle & Stein
1512 Frick Building
Pittsburgh, Pennsylvania 15219

Daniel P. Gruender
Shimmel, Hill, Bishop & Gruender, P.C.
10th Floor
111 West Monroe
Phoenix, Arizona 85003

_____

Charles P. O'Connor

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BRIEF OF THE BITUMINOUS COAL OPERATORS' ASSOCIATION, INC., AMICUS CURIAE

STATEMENT OF INTEREST

The Bituminous Coal Operators' Association, Inc. (BCOA) is a multi-employer bargaining association which represents approximately 160 member coal operators in collective bargaining matters with the United Mine Workers of America (UMWA). BCOA and the UMWA negotiate the terms of the National Bituminous Coal Wage Agreement, pursuant to which

the United Mine Workers of America 1974 Pension Trust was established. This jointly-administered trust covers approximately 140,000 active and 9,000 retired participants. Operators represented by BCOA account for approximately 75% of total contributions to the Trust.

Under the terms of the 1974 Pension Trust, BCOA, as representative of employers contributing 51% or more of the total annual contributions to the Trust, appoints one of the Trust's three (3) trustees. BCOA is concerned that the decision of the Court of Appeals below, by holding that management-appointed trustees serve as collective bargaining representatives of the employer, may detrimentally affect labor relations in the mining industry and the efficient administration of the Trust. Its interest is evidenced by the fact that the subject matter of the litigation is the fund established by BCOA. BCOA believes that its views as the bargaining representative of participants in the fund will not otherwise be presented to the Court in this litigation. It has obtained the consent of all parties before the Court to file its brief as *amicus curiae*.

SUMMARY OF ARGUMENT

The Court of Appeals has held that management-appointed trustees of jointly-administered benefit trusts owe a divided loyalty to management as well as to participants and beneficiaries of the trusts. This decision sharply conflicts with the fiduciary responsibilities imposed on fund trustees by the Labor Management Relations Act of 1947 (LMRA) and the Employee Retirement Income Security Act of 1974 (ERISA).

Nothing in the LMRA indicates that the otherwise strict common law duty of undivided loyalty to beneficiaries is inapplicable to fund trustees. Indeed, judicial precedent interpreting trustee responsibilities

under the LMRA has emphasized this fundamental duty.

Congress codified the fiduciary status of trustees in Section 404 of ERISA: a trustee must "discharge his duties ... solely in the interest of the participants and the beneficiaries and ... for the exclusive purpose of ... providing benefits to the participants and their beneficiaries ...." Indeed, Congress' careful formulation of general and specific fiduciary obligations in ERISA suggests that it understood the proper role of trustees to be one of undivided allegiance to plan participants and beneficiaries. The decision of the Court of Appeals stands as an anomaly that cannot be reconciled with either the legislative scheme incorporated in ERISA and the LMRA or with the judicial precedent interpreting congressional intent in this area.

Moreover, by holding that management-appointed trustees are collective bargaining representatives within the meaning of Section 8(b)(1)(B), the Court of Appeals has improperly extended the NLRB's jurisdiction to encompass employee benefit fund administration and regulation — an area already committed by Congress to the Courts and to the Secretary of Labor under Sections 301-303 of the LMRA and Title I of ERISA. The decision constitutes an attempt to usurp a policy-making function which is properly vested in our legislative branch and should, therefore, be reversed.

ARGUMENT

A. THE COURT OF APPEALS' HOLDING THAT MANAGEMENT-APPOINTED TRUSTEES OF JOINTLY-ADMINISTERED BENEFIT TRUSTS OWE A DIVIDED LOYALTY TO MANAGEMENT AS WELL AS TO PARTICIPANTS AND BENEFICIARIES CONFLICTS WITH THE STATUTORY SCHEME OF TRUST FUND ADMINISTRATION ARTICULATED

BY CONGRESS IN THE LABOR MANAGEMENT RELATIONS ACT OF 1947 AND IN THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

The Court of Appeals, in a heretofore unprecedented decision, has held that the management-appointed trustees of jointly-administered labor-management benefit funds are "collective bargaining representatives" for purposes of Section 8(b)(1)(B) of the National Labor Relations Act (NLRA), 29 U.S.C. §158(b)(1)(B). Under this ruling, management-appointed trustees are concurrently answerable to management as well as to the employee participants and beneficiaries of a fund. The decision directly conflicts with the statutory scheme of trust fund administration articulated by Congress in the Labor Management Relations Act of 1947 (LMRA), 29 U.S.C. §141 *et seq.*, and the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1001 *et seq.*, and should, therefore, be reversed.

Section 302 of the LMRA, 29 U.S.C. §186, was Congress' initial attempt to regulate the management of collectively bargained employee pension and welfare benefit funds. The statute, enacted as an anti-bribery measure, generally forbids all employer payments to representatives of employees. Section 302(c)(5) of the LMRA, 29 U.S.C. §186(c)(5), however, sets forth a limited exception to the Act's general prohibition for employer payments to jointly-administered trust funds established for the sole and exclusive benefit of the contributing employers' employees and their families and dependents. The Act lists specific benefits which may be provided by the funds and prescribes certain requirements for their administration. The basic intent of this initial legislative effort was to prevent manipulation and exploitation of the funds by union officers. *Arroyo* v. *United States*, 359 U.S. 419, 425-426 (1959). By removing sole control from the unions, Congress believed it could

prevent fund assets from becoming "war chests" for powerful unions. *Blankenship* v. *Boyle*, 329 F. Supp. 1089, 1094-1095 (D.D.C. 1971), *aff'd mem.*, 511 F.2d 447 (D.C. Cir. 1975).

Thus, to prevent potential union abuse, Congress established the principle of equal representation in trust-fund administration. Pursuant to Section 302(c)(5)-(B) of the LMRA, 29 U.S.C. §186(c)(5)(B), "employers and employees [must be] equally represented in the administration of such fund[s], together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon ...." By including dispute resolution mechanisms in the statute, together with the requirement of equal representation, Congress attempted to shield fund administration from the confrontation politics that often mark labor management collective bargaining. *See Blankenship* v. *Boyle*, *supra* at 1094.

Congress believed it could temper the anticipated differences between management-appointed trustees and union-appointed trustees by providing that the parties may select a neutral trustee to participate in trust administration. There is nothing, however, "in the Labor Management Relations Act or other federal statutes or in their legislative history which can be said to alleviate the otherwise strict common-law fiduciary responsibilities of trustees appointed for employee welfare or pension funds developed by collective

bargaining." *Id.*[1] Thus, trust administration under Section 302 of the LMRA was "designed not to alter, but to reinforce 'the most fundamental duty owed by the trustee': the duty of undivided loyalty to the beneficiaries." *Id.* at 1095 (citation omitted). The Court of Appeals' decision, which holds that management-appointed trustees are collective bargaining representatives owing dual loyalties to management as well as to trust participants and beneficiaries, is fundamentally at odds with this Congressional scheme.

Congress codified the fiduciary status of trustees when it enacted ERISA. Section 404(a)(1) of ERISA, 29 U.S.C. §1104(a)(1), sets forth general fiduciary obligations and requires, *inter alia,* that a trustee "discharge his duties with respect to a plan *solely* in the interests of the participants and beneficiaries and ... for the *exclusive* purpose of ... providing benefits to participants and their beneficiaries ...." (Emphasis supplied). Thus, the Act follows and codifies the common law with respect to a fiduciary's duties and obligations. In addition, ERISA contains a detailed list of specific fiduciary prohibitions, which elaborate the principle that trustees owe an undivided loyalty to fund participants and beneficiaries. In fact, in order to achieve more practical enforcement of the law, Congress adopted the specific prohibited transaction

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[1]Bogert succinctly explained the duties and obligations of trustees at common law in his treatise, *Trust and Trustees,* 2d ed., Ch. 26, §543:

> One of the most fundamental duties of the trustee is that he must display throughout the administration of the trust complete loyalty to the interest of the cestui que trust, and must exclude all selfish interests and all consideration of the welfare of third persons .... Reasons behind the establishment of the loyalty rule by equity are that it is generally, if not always, humanly impossible for the same persons to act fairly in two capacities and on behalf of two interests in the same transaction.

approach as an alternative to a general conflict-of-interest rule prohibiting dealings on other than an arm's length basis. *See* S. Rep. No. 93-383, 93rd Cong., 1st Sess. 94-95 (1975).

Section 406(b)(2), 29 U.S.C. §1106(b)(2), sets forth one of ERISA's specific proscriptions on fiduciary self-dealing and prohibits a trustee from "act[ing] in an transaction involving the plan on behalf of a party (or represent[ing] a party) whose interests are adverse to the interests of the plan or the interests of its participants[2] or beneficiaries."[3] The House Conference Committee explained that this provision "prevents a fiduciary from being put in a position where he has *dual loyalties,* and, therefore he cannot act exclusively for the benefit of a plan's participants and beneficiaries." H.R. Conf. Rep. No. 93-1280, 93d Cong., 2d Sess. 309 (1974) (Emphasis added.)

ERISA section 408(c)(3), 29 U.S.C. §1108(c)(3), contains one of the Act's exceptions to its prohibited transaction provisions and recognizes that an "officer, employee, agent or other representative of a party in interest" with respect to a plan may also serve as a plan trustee. Nothing in that section, however, suggests that a trustee remains primarily or even equally responsible to the party appointing him or acts as a collective bargaining representative of the appointing party when he assumes fiduciary responsibility as a trustee. Rather, section 408(c)(3) reflects Congress' perception that its comprehensive prohibited transaction provisions might

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[2]A participant under Section 3(7) of ERISA, 29 U.S.C. §1002(7), includes "any employee ... who is or may become eligible to receive a benefit of any type from an employee benefit plan ...."

[3]A beneficiary under Section 3(8) of ERISA, 29 U.S.C. §1002(8), is defined as a "person designated by a participant or by the terms of an employee benefit plan who is or may become entitled to a benefit thereunder."

otherwise be construed to prevent logical candidates for trustee positions on labor-management funds from serving in that capacity. Indeed, ERISA's carefully crafted general and specific fiduciary obligations reflect that Congress' perception of trustees had evolved from its partisan-representative origins that were suggested in certain aspects of Section 302 of the LMRA, to that of neutral fiduciaries owing undivided allegiance to participants and beneficiaries notwithstanding any partisan positions simultaneously held by the individuals involved.

That the Court of Appeals has obfuscated the statutory directive of Congress by holding that fund trustees remain responsible to their appointing parties is further demonstrated by the comments of ERISA's original sponsors during recent Congressional debate on the 1980 amendments to the Act.[4] Senator Jennings Randolph of West Virginia addressed the Chairman of the Senate Labor and Public Welfare Committee seeking clarification of Congressional intent in enacting ERISA's fiduciary provisions:

> Although this bill has added new and additional responsibilities of plan trustees, particularly under the reorganization provisions of the bill, is it not correct that this legislation reaffirms the present law, that these plan trustees as fiduciaries still have the sole responsibility, as I understand it, to the beneficiaries of the plan? My concern is partly based on a recent Court of Appeals decision [the Third Circuit decision below], which I believe will be overturned on appeal, that

[4]The Multiemployer Pension Plan Amendments Act of 1980, P.L. 96-364, 29 U.S.C. §1001a *et seq.*, amending ERISA's plan termination insurance provisions as they relate to collectively bargained multiemployer pension plans, was enacted on September 26, 1980.

> apparently suggests that the trustee[s] have some obligations to the parties who appoint them. I do not believe that we in the Congress have ever expressed any intent under ERISA or any other federal law that an agency status should or does exist between trustees and their appointers. 126 Cong. Rec. S10104 (Daily ed. July 29, 1980).

Chairman Harrison Williams of New Jersey responded:

> I am happy to respond to the Senator from West Virginia that that is the situation and that is correct. In all instances the actions of the trustees must be made with the sole interest of the plan's beneficiaries in mind. That was, that is, and that will be. *Id.*

On the House side, Representative Frank Thompson of New Jersey expressed his disapproval of the Court of Appeals decision below:

> Although this bill has added important new responsibilities for plan trustees, particularly under the reorganization provisions, this legislation simply reaffirms the present law, that these plan trustees as fiduciaries have sole responsibility to the participants and beneficiaries of the plan. A recent Court of Appeals decision, Amax Coal Company against NLRB which was wrongly decided, apparently suggests that the trustees are collective bargaining agents for the parties who appoint them. That is an erroneous interpretation of both ERISA and federal labor law and does not reflect Congressional intent. 126 Cong. Rec. H7902 (Daily ed. Aug. 26. 1980).

Judicial precedents interpreting ERISA and the LMRA have correctly held that the duties of trustees, in administering employee benefit trusts, differ distinctly from the duties of collective bargainers in negotiating contract provisions. Indeed, this Court noted in *Allied Chemical & Alkali Workers of America* v. *Pittsburgh Plate Glass Co., Chemical Division,* 404 U.S. 157, 170 (1974), that "the union's role in the administration of the fund is of a different order from its duties as collective bargaining agent." Similarly, in *Miniard* v. *Lewis,* 387 F.2d 864 (D.C. Cir. 1967), the Court of Appeals for the D.C. Circuit contrasted the duties of bargaining representatives with the duties of appointed trustees. There, the court rejected an employee's assertion that the union's duty of fair representation extended to the union-appointed trustees. The court explained:

> Even though the fund here resulted from bargaining between the employers and the union, we believe that the traditional duty owed by a union to its members is not applicable. Rather, the trustees' duties are those of fiduciaries because as trustees, they perform a separate function and do not act as representatives of either the employers or the union. *Id.* at 865, n.5 (Emphasis supplied).

In *Toensing* v. *Brown,* 528 F.2d 69 (9th Cir. 1975), the Court of Appeals for the Ninth Circuit compared the duties and responsibilities owed by trustees to their appointing parties with the duties owed to the participants and beneficiaries of the trust fund. The court explained that, while trustees act properly by considering the views of the collective bargaining parties:

> Trustees have a duty to exercise their independent judgment in administering trust

> funds established under §302 of the Labor Management Relations Act. Recommendations of collective bargaining parties may be adopted by the trustees in the exercise of their discretion, but such recommendations are not binding or obligatory. *Id.* at 72.

Finally, in *Lamb* v. *Carey,* 498 F.2d 789, 793 (D.C. Cir. 1974), *cert. denied sub nom. Carey v. Davis,* 419 U.S. 869 (1974), the Court of Appeals for the D.C. Circuit emphasized that "[r]egardless of their representative relationships, the Trustees of the Fund are still required to act with the highest fiduciary integrity toward the Fund and the beneficiaries."

Each of these decisions reinforces the notion that when a trustee undertakes a role in trust fund administration, his most fundamental duty is that of "undivided loyalty to the beneficiaries." *Blankenship,* 329 F. Supp. at 1095. By holding that management-appointed trustees remain responsible to management as well as to participants and beneficiaries of the trusts, the Court of Appeals below has unnecessarily threatened the basic fiduciary principles incorporated in ERISA and Section 302 of the LMRA.

While it is unrealistic to assume that management trustees can totally detach themselves from the fact that they were appointed by employers, it is equally unrealistic to assume that these trustees, if invested with the statutory obligation to act as collective bargaining representatives, can administer the trust at all times consistent with the best interests of the participants and beneficiaries. Indeed, the Court of Appeals' holding that management-appointed trustees are collective bargaining representatives under the NLRA creates a myriad of practical difficulties in trust fund administration. If the Court of Appeals' decision is affirmed, it is likely that trust administration would become an

ancillary forum for the collective bargaining process. Specifically, one set of bargaining representatives might be inclined to make concessions with respect to issues of trust administration, in return for concessions on other non-trust related issues. In this scenario, decisions reached by the trustees could very well be prejudicial, or at the least, insensitive, to the interests of the participants and beneficiaries of the fund.

The two-judge panel of the Court of Appeals, in its brief and conclusory treatment of the trustee-status issue, rejected the well-reasoned NLRB opinion below, *United Mine Workers of America, Local No. 1854 (Amax Coal Co.)*, 238 NLRB 1583 (1978), and the NLRB's decision in *Sheet Metal Workers' International Association*, 234 NLRB 1238 (1978). Moreover, the court overruled or significantly limited several of its own decisions interpreting ERISA and the LMRA without so stating.[5]

In both the decision below and in the previous case, *Sheet Metal Workers' International Association*, 234 NLRB 1238 (1978), *petition for review pending sub nom. Central Florida Sheet Metal Contractors Association* v. *NLRB*, No. 79-2396 (5th Cir. 1979), the NLRB concluded that management-apponted trustees of Section 302(c)(5) benefit trusts are not collective bargaining representatives within the meaning of

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[5]*United Marine Division, I.L.A., Local No. 333* v. *Essex Transportation Co.*, 216 F.2d 410 (3d Cir. 1954); *Mechanical Contractors Association of Philadelphia, Inc.* v. *Local Union 420*, 265 F.2d 607 (3d Cir. 1959); *Cutaiar v. Marshall*, 590 F.2d 523 (3d Cir. 1979).

Section 8(b)(1)(b) of the NLRA.[6] The Court of Appeals panel, however, relying on dictum from its previous decision in *Associated Contractors of Essex County, Inc.* v. *The Laborers International Union of North America*, 559 F.2d 222, 228 (3d Cir. 1977) (trustees of a Section 302(c)(5) trust fund are engaged in an "ongoing collective bargaining process"), reached an opposite result.

Surprisingly, the Court of Appeals failed to acknowledge that its opinion overruled or severely restricted several of its own decisions. For example, the court had previously described the role and duties of trustees under Section 302 of the LMRA in *United Marine Division, I.L.A., Local No. 333* v. *Essex Transportation Co.*, 216 F.2d 410, 412 (3d Cir. 1954). There, the Court stated that:

> These trustees were not, in our judgment representatives of the employees. They were trustees of a welfare fund. It is true that they were chosen half and half by the employers' association and this union. But we think that when set up as a board, as they were in this

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[6]The Secretary of Labor filed *amicus curiae* briefs supporting this position in both cases. The Secretary's interest in this issue stems from his administration and enforcement of fiduciary responsibility standards and other provisions of Title I of ERISA. In urging the Board to hold that trustees of these jointly-administered trust funds are not collective bargaining representatives within the meaning of the NLRA, the Secretary argued that the fiduciary obligations imposed by ERISA are diametrically opposed to the obligations of a collective bargaining representative. In the Secretary's view, to hold that trustees of multiemployer benefit funds also serve as collective bargaining representatives would place them in "a virtually untenable position 'regarding the proper execution of their fiduciary duties, obligations and responsibilities to the plans participants'." *Sheet Metal Workers' International Association*, 234 NLRB 1238, 1246 (1978).

> case, these individuals are not acting as representatives of either union or employers. They are trustees of a fund and have fiduciary duties in connection therewith as do any other trustees. The terms under which they act were carefully spelled out.

Accord, Mechanical Contractors Association of Philadelphia, Inc. v. Local Union 420, 265 F.2d 607 (3d Cir. 1959) (when an individual acts as trustee, he is not a "representative of an employee" within the prohibitions of Section 302(a) and (b) of the LMRA). The court's interpretation of trustees' fiduciary duties in these cases is certainly at odds with the dual-loyalty theory subscribed to in the decision below.

Finally, in *Cutaiar v. Marshall* 590 F.2d 523 (3d Cir. 1979) the Third Circuit enforced the Secretary of Labor's finding that common trustees of two related benefit funds engaged in a *per se* violation of ERISA's prohibited transaction provisions by authorizing loans between the funds. The court held that the loans were illegal under Section 406(b)(2) of ERISA because the common trustees acted on both sides of the transactions by representing both the lender fund and borrower fund. Clearly, the Court of Appeals' recognition and application of the stringent fiduciary standards imposed by Section 406(b)(2) on fund trustees in *Cutaiar* cannot be squared with its holding below that trustees, as collective bargaining representatives, are answerable to their appointing parties in addition to the participants and beneficiaries of the fund.

It is readily apparent that the decision of the Court of Appeals below is an anomaly that cannot be reconciled with either the statutory scheme of trust fund administration incorporated in ERISA and the LMRA or with the judicial precedent interpreting congressional

intent in this area. The decision, therefore, should be reversed.

B. THE COURT OF APPEALS' DECISION IMPROPERLY INJECTS THE NATIONAL LABOR RELATIONS BOARD INTO THE REGULATION OF JOINTLY-ADMINISTERED BENEFIT TRUST FUNDS BY HOLDING THAT TRUST FUND ADMINISTRATION IS COLLECTIVE BARGAINING FOR PURPOSES OF THE NATIONAL LABOR RELATIONS ACT.

The Court of Appeals, by holding that appointed trustees are collective bargaining representatives within the meaning of Section 8(b)(1)(B) of the Act, has improperly extended the NLRB's jurisdiction to encompass employee benefit fund administration and regulation — an area which has already been committed by Congress to the Secretary of Labor and the Courts under Sections 301-303 of the LMRA and Title I of ERISA. The Court has stated that the NLRA should not be interpreted to thrust the National Labor Relations Board "into a new area of regulation which Congress ha[s] not committed to it." *Ford Motor Co.* v. *NLRB*, 441 U.S. 488, 497 (1979), quoting from *NLRB* v. *Insurance Agents*, 361 U.S. 477, 499 (1960).

Moreover, the decision necessarily subjects trustees to the duty of good faith bargaining as set forth in Sections 8(a)(5), 8(b)(3) and (8)(d) of the NLRA. Thus, for the first time, trustees may be found to have violated the Act by refusing to bargain when they deadlock over administrative and policy issues. Yet, Congress fully expected that trustee deadlocks would occur and incorporated into the LMRA certain mechanisms for dispute resolution. Congress never indicated that trustee disputes over fund administration could also be subject to resolution by the Board or that such disputes could subject the trustees to penalties and remedial orders outside of those prescribed in the LMRA and

ERISA. Finally, the logical consequence of the discussion above is that unhappy participants may now be permitted to sue union-appointed trustees under Section 301 of the LMRA for breach of the duty of fair representation. ERISA, however, contains extensive provisions for trustee liability for breach of fiduciary duty to plan participants and beneficiaries. It does not contemplate concurrent trustee or union liability for breach of the traditional duty owed by a union to its members. Cf. *Miniard* v. *Lewis*, 387 F.2d 864 (D.C. Cir. 1967), *cert. denied*, 393 U.S. 873 (1968) (union trustees owe no duty of fair representation under the LMRA).

The statutory conflicts engendered by the opinion below are both real and obvious. The decision is fundamentally inconsistent with provisions of the LMRA and ERISA and constitutes "an attempt to usurp 'major policy decisions properly made by Congress'." *Ford Motor Co., supra* at 497, quoting from *American Ship Building Co.* v. *NLRB*, 380 U.S. 300, 318 (1965). The decision below should be reversed.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court below should be reversed.

Respectfully submitted,

CHARLES P. O'CONNOR
HARRY A. RISSETTO
MARGERY SINDER FRIEDMAN
1800 M Street, N.W.
Washington, D.C. 20036

Counsel for Amicus Curiae
Bituminous Coal Operators'
Association, Inc.